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Group FO
Class 881
Piece 5814

F.O. 881/5814

Printed for the use of the Foreign Office. January 1889.

S 1327

CONFIDENTIAL.

(5814.)

Memorandum as to Right of Great Britain to interfere in Disputes between Nicaragua and the Mosquito Indians.

Mr. Phelps, December 4, 1888
Mr. Gastrell to Señor Zabala, September 10, 1888.
To Mr. Gastrell, No. 37, August 4, 1888.
Mr. Gastrell, No. 110, September 11, 1888.

THIS friendly protest on the part of the United States against any interference of this country in the internal affairs of Mosquito or in the disputes between Nicaragua and the Mosquito Indians is the result of a communication which has recently been addressed by Mr. Gastrell to the Nicaraguan Minister for Foreign Affairs under instructions from this Office.

Those instructions were issued in consequence of an alleged encroachment made by Nicaragua on the Mosquito Reserve; of the establishment of a Nicaraguan post-office at Bluefields; and of the stationing of Nicaraguan troops and police, as well as of the establishment of Nicaraguan forts and arsenals, on military stations within the territory reserved to the Mosquito Indians by the Treaty of Managua, which proceedings were considered by Her Majesty's Government to be opposed to the spirit, if not to the letter, of that Treaty.

Mr. Phelps, December 4, 1888.

Mr. Bayard, in his despatch to Mr. Phelps of the 23rd November last (a copy of which was inclosed in Mr. Phelps' note of the 4th ultimo) commences by giving a "brief historical view" of the protracted discussions which preceded and followed the conclusion of the Clayton-Bulwer Convention of the 19th April, 1850; he then comments on the wording of the Treaty of Managua of the 28th January, 1860, and on the Emperor of Austria's Award of July 1881 on certain points then in dispute respecting the interpretation to be put upon certain clauses of that Treaty; and he winds up by denying the right of Her Majesty any

longer to interfere in disputes between Nicaragua and the Mosquito Indians.

It appears to be unnecessary, however, to follow Mr. Bayard through the historical account which he gives of the long-vexed Mosquito question, as I think it must be admitted at once that the question as to how far Her Majesty's Government would be justified in interfering with the relations between Nicaragua and the Mosquito Indians, now that the British Protectorate has been formally withdrawn, is a very delicate one.

By the Clayton-Bulwer Convention of the 19th April, 1850, it was agreed that neither Great Britain nor the United States would ever occupy, or fortify, or colonize, or assume, or exercise any dominion over . . . . the Mosquito coast (or other parts of Central America), ... nor would either make use of any protection which either afforded or might afford . . . . for the purpose of occupying, fortifying, or colonizing . . . the Mosquito Coast . . . . or of assuming or exercising dominion over the same; and by the Treaty concluded between this country and Nicaragua, signed at Managua on the 28th January, 1860, the British Protectorate, which had for a long period previously been extended over the Mosquito Indians, was withdrawn, but subject, be it observed, to certain conditions, one of which was that a district should be assigned to those Indians (which was defined in the Treaty), in which they should enjoy the right of governing—according to their own customs and according to any Regulations which might, from time to time, be adopted by them (not inconsistent with the sovereign rights of the Republic of Nicaragua)—themselves and all persons residing within such district.

Clayton-Bulwer Convention, April 19, 1850. Hertslet's Treaties, vol. viii, p. 969.

Hertslet's Treaties, vol. xi, p. 446.

The conclusion of this arrangement was officially communicated to the Government of the United States, which regarded it as a final withdrawal of British influence from the Mosquito country, and they expressed their satisfaction at a settlement that appeared to put an end to the disputes to which the Clayton-Bulwer Convention had given rise.

It is important, however, to bear in mind that, by the Treaty of Managua, Nicaragua entered into distinct engagements with this country, one of which was (Article II) to assign a specific district to the Mosquito Indians, and another (Article III) to respect and not to interfere with their customs or with any Regulations which might from time to time be adopted by them, within the said district,

not inconsistent with the sovereign rights of Nicaragua.

State Papers, vol. lxxii, p. 1210.

On the 13th September, 1861, a Municipal Constitution for the Government of the Mosquito Reservation was published at Bluefields, in which it was declared to be the duty of the Executive Council (among other things) to "regulate the receipt, collection, and expenditure of the finances, taxes, and revenues of the 'Municipal Authority,'" which was declared to be the official name of the Government of the Mosquito Reservation.

By another Article of the Treaty of Managua (Article V), Nicaragua engaged to pay to the Chief of the Mosquito Indians an annual sum of 5,000 hard dollars for the space of ten years; and by another (Article IV), it was stipulated that nothing in the Treaty should be construed to prevent the Mosquito Indians, at any future time, from agreeing to absolute incorporation into the Republic of Nicaragua.

It is unnecessary for the present purpose to enter into a full description of the various Articles of this Treaty; but it may be mentioned that, as it was declared (Article I) that the British Protectorate of that part of the Mosquito territory which was within the frontier of the Republic of Nicaragua (for another portion of the Mosquito territory was within the frontier of the Republic of Honduras, to which attention will be drawn later on) should cease three months after the exchange of the ratifications of that Treaty, which were exchanged on the 2nd August, 1860, the British Protectorate over the Mosquito Indians ceased on the 2nd November, 1860.

By the cessation of that Protectorate, however, it cannot fairly be maintained that Nicaragua was no longer bound by her Treaty engagements towards this country, for were this so, it might be asked,—"Where was the necessity for this country to enter into a Treaty with Nicaragua, upon the subject of the Mosquito Indians, at all?" The British Government might have simply withdrawn their Protectorate, and left the Indians to their fate; but they did not think it advisable to do this, and only consented to withdraw that Protectorate conditionally; and I think it cannot be denied that, should the Nicaraguan Government go so far as to repudiate her engagements and liabilities under that Treaty, and—to put an extreme case—incorporate the Mosquito Reserve within the Republic of Nicaragua, unconditionally, and without the consent of

the Mosquito Indians, Her Majesty's Government would be entitled, by international law, to consider that Treaty as at an end, notwithstanding any protest which might be raised against such a step by the United States' Government.

But Her Majesty's Government have never shown any desire to resume their Protectorate over the Mosquito Indians, nor have they any wish or intention to do so now. All that they have been anxious to do, and which they have considered that they had a Treaty right to do, has been to see that the stipulations of the Treaty of Managua were strictly carried out.

For instance, when disputes arose between this country and Nicaragua respecting the true interpretation to be put upon certain Articles of the Treaty of Managua, relating to the payment to the Indians of the arrears of the yearly sums assured to them by Article V of that Treaty; to the imposition of import and export duties at Grey Town, and other points; the matter was, in April 1879, referred, by mutual consent, to the arbitration of the Emperor of Austria, who pronounced his decision in the shape of an Award, on the various points submitted to His Majesty, on the 2nd July, 1881. In this Award, the Emperor said the sovereignty of the Republic of Nicaragua, which was recognized by Articles I and II of the Treaty of Managua, was not full and unlimited with regard to the territory assigned to the Mosquito Indians, but was limited by the self-government conceded to the Mosquito Indians in Article III of that Treaty; that the Republic of Nicaragua was entitled to appoint a Commissioner for the protection of its sovereign rights throughout the territory assigned to the Mosquito Indians; but that Nicaragua was not entitled to grant Concessions for the acquisition of natural products in the Mosquito Reserve, or to regulate the trade of the Mosquito Indians, or to levy duties on goods imported into or exported from the territory reserved to the Indians, as those rights belonged to the Mosquitos.

The decision pronounced by the Emperor of Austria with regard to the payment of the arrears due to the Indians, as well as to the levying of duties at Grey Town, was at once accepted by the Nicaraguan Government, and faithfully carried into execution; but Mr. Bayard now, for the first time it is believed, declares that as the United States' Government was no party to this reference to the arbitration of the Emperor of Austria, "it is not

bound by the Award of the Arbitrator, nor committed in any way to an admission of the right of Great Britain to interfere in disputes between the Republic of Nicaragua and the Indians living within her borders;" which is tantamount to saying that this country would have no right to remonstrate in the slightest degree should Nicaragua decline to respect her Treaty engagements; but the United States was no party to the Treaty of Managua, and there was no necessity, therefore, to consult the United States' Government with regard to the reference of the disputed points to arbitration. It is satisfactory, however, to observe that Nicaragua has hitherto shown no sign of repudiating her Treaty engagements, and it is evident, from the Emperor of Austria's Award, that His Majesty does not share the extreme views of the United States' Government.

The questions which have given rise to the present discussion are first, the alleged encroachment by Nicaragua on the Mosquito Reserve. Now all that Her Majesty's Government instructed Mr. Gastrell to do, and all that he did do under those instructions, was to inform the Nicaraguan Government that "Lord Salisbury would be glad to know" what were the astronomical observations upon which that Government relied when defining the western boundary of the Mosquito Reserve; no words being used to imply a protest or threat.

This inquiry was made in consequence of the Mosquito Chief having been informed by Lord Granville, on the 17th October, 1884, that although, on the cessation of the British Protectorate, Her Majesty's Government had no further concern directly, in the matter of the boundary delimitation between Nicaragua and the Reserve, yet that, should the Nicaraguan Government, in marking the boundary, encroach upon the territory reserved to the Mosquito Indians by the Treaty of Managua, "they would not object, as an earnest of their goodwill, to address a friendly remonstrance to Nicaragua on the subject, on receiving from the Mosquito Chief the necessary particulars supported by trustworthy evidence;" and in consequence of the receipt of a letter from the Mosquito Chief to Her Majesty's Government, dated the 1st June last, complaining that Nicaragua, in marking the boundary, had encroached on the territory of the Mosquito Reserve, and appealing to Her Majesty's Government on the subject.

The second question which has given rise to the

present interference on the part of the United States is the erection of forts, arsenals, or military posts; the establishment of Nicaraguan post-offices; and the exercise of military and police authority by Nicaragua within the territory of the Reservation; and, acting under instructions from Lord Salisbury, Mr. Gastrell has informed the Nicaraguan Minister for Foreign Affairs that, in the opinion of Her Majesty's Government, such proceedings were inconsistent with the spirit of the Treaty of Managua, which says that "the sovereignty of Nicaragua is not full and unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by the self-government conceded to the Mosquito Indians by the Treaty of Managua."

Whether the erection of forts, arsenals, or military posts, or the exercise of military or police authority within the Reserve is, or is not, a violation of the Treaty of Managua, may be open to doubt; but the establishment of Nicaraguan post-offices would seem to be a clear violation of the Treaty as well as of the Constitution of Mosquito of the 13th September, 1861, which gives the Executive Council a right to regulate the receipt, collection, and expenditure of the finances, taxes, and revenues of the Municipal Authority."

These questions could, no doubt, be amicably settled directly between the British and Nicaraguan Governments, but the United States assert that Her Majesty's Government have no right to interfere in disputes between Nicaragua and the Mosquito Indians, and they go so far as to maintain that "the stipulations of the Treaty of Managua, relative to the privileges to be accorded to the Mosquito Indians, were not for the benefit of Great Britain, and *are not enforceable by her*;" but to accept such a doctrine as this, would be to admit that the "Treaty," so called, was no Treaty at all, that was simply a one-sided engagement on the part of Nicaragua, which she might repudiate at will; but the Emperor of Austria's Award, "based on legal opinions," shows, I think, that such a doctrine would not be supported by other nations.

But there is another point in connection with this question which should not, I think, be overlooked, and that is, that at the same time that a Treaty was signed with *Nicaragua* with regard to the Mosquito Indians *within the frontier of that Republic*, a Treaty was signed with *Honduras* (on the 28th November, 1859) recognizing the Bay Islands as belonging to that Republic, and with-

Hertslet's Treaties, vol. xi, p. 367.

drawing the British Protectorate from those Mosquito Indians who resided *within the frontier of that Republic.*

By this Treaty, the Republic of Honduras also engaged to grant an annual sum of 5,000 dollars for ten years for the improvement of the social condition of those Indians, and a friendly correspondence has since passed betweeu the British and Hondurean Governments as to whom this money should be paid. The Government of Honduras have expressed their readiness to pay these sums whenever it is decided who the right person is to receive them (the "Chief" in Nicaragua, or the "Headman" in Honduras); but according to the theory propounded by Mr. Bayard, the Government of Honduras have no right to consult the British Government on the subject, or the British Government to offer any opinion respecting it. If so, how, it may be asked, is such a dispute as this to be settled? The United States deny the right of this country and Nicaragua, and they would, therefore, equally deny the right of this country and Honduras to refer such questions to arbitration; and as an attempt to settle them by friendly correspondence is deemed by the United States to be interference in the internal affairs of the Mosquito Indians, or "the assertion of a Protectorate in another form," what is the other alternative which they would suggest, short of a repudiation of these international engagements?

A very great deal might be written upon this subject, showing what has passed since the conclusion of the above-mentioned Treaties with Nicaragua and Honduras; but as the question now raised by the United States would appear to be one of *principle* rather than one of detail, perhaps sufficient has been written to show how the matter really stands, and what right the United States' Government have to protest, even in a friendly manner, against the action taken by Her Majesty's Government, in the disputes now taking place between Nicaragua and the Mosquito Indians.

If the Indians within Nicaraguan territory could be induced to apply to be incorporated within the Republic of Nicaragua, that would simplify matters so far as the present difficulty was concerned; but, sooner or later, the same question would be raised with regard to the right of this country to interfere in disputes between the

Mosquito Indians and the Republic of Honduras; so that the question had better be treated now on its merits, that is to say, as to how far this country has a right to call upon Nicaragua and Honduras to fulfil their Treaty engagements towards this country.

E. HERTSLET.

Foreign Office,
January 5, 1889.

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